SAW GIM HEONG (f) v. LOO SOOK MING

[A. C. J. (Thomson, J.) May 1, 1953]

[Ipoh — Civil Appeal No. 15 of 1952]

Landlord and tenant — Separate dwelling — Interpretation — Premises within the scope of the Control of Rent Ordinance — Ejectment — Finding of fact.

In this case the appellant was the tenant and the respondent a sub-tenant. The appellant commenced proceedings in the magistrate's court to eject the respondent on the ground that the rooms let to the respondent were not let as a "separate dwelling". But the Magistrate held that the respondent was the sub-tenant of the whole shophouse. The appellant appealed against this decision.

Held: (1) the principles laid down in the case of Neale v. Del Soto[1] are not of very great assistance to the interpretation of the Control of Rent Ordinance; (2) the Magistrate's finding, that what was let to the respondent was the whole shophouse, is a finding of fact and the appellate Court will not interfere.

Cases referred to:—

(1) *Neale v. Del Soto* (1945) 1 K.B. 144.

(2) *Ng Kim Beng v. Tay Siong Chuan* (1949) M.L.J. 55.

(3) *Leong Hoi Kow v. Yap Wee Chong* (Perak Civil Appeal No. 5 of 1952 — unreported).

CIVIL APPEAL.

H. T. Ong for the appellant.

K. C. Chen for the respondent.

Thomson, J. : — This is an appeal from a judgment of the Magistrate at Taiping.

The appellant is the tenant of premises at No. 2 Theatre Road, Taiping and in 1942 the respondent became her sub-tenant to an extent that has been in controversy throughout the proceedings at a monthly rent of $35 which was later increased to $40. On 13th June, 1952 the appellant gave the respondent notice to terminate his sub-tenancy which was a monthly one. The respondent, however, remained in possession and on 22nd August, 1952 the appellant commenced proceedings in the Magistrate's Court for his ejectment and certain ancillary relief.

There was no question of the respondent being in arrears with his rent at any time and the proceedings for his ejectment were commenced without the permission of the Rent Assessment Board. In the circumstances the only question the Court had to consider was whether or not the respondent's sub-tenancy was protected by the Control of Rent Ordinance.

The premises of which the appellant is tenant consist of a two-storeyed house with five rooms upstairs and three rooms and a kitchen and bathroom downstairs. Of the upstairs rooms two are occupied by the appellant and a woman named Khor Ah Gim and three rooms are occupied by the respondent. Each of the downstairs rooms is used by all three occupants of the house, apparently, indiscriminately. It is not, I think, necessary to examine this use of the downstairs rooms in very great detail. Generally speaking, the dining room and the kitchen and bathroom are used by all three persons for domestic purposes. The other two rooms are used by the respondent for purposes of his business which was formerly that of a cigar manufacturer and is now that of a seller of newspapers; they are used by the appellant for the accommodation and worship of her ancestral tablets and for the accommodation of a certain amount of furniture and for purposes of access; and they are used by the woman Khor Ah Gim for purposes of worship and access. Above the front door there is a large sign-board announcing the presence of a cigar factory, presumably a reference to the former occupation of the respondent, and on the front pillar and end wall are a number of advertisements for Chinese daily newspapers. In an inconspicuous position over the side door there is a small sign bearing the 'Chop' or business name of the appellant, a convenience which she would seem to have acquired extremely recently for no very obvious reasons. To this description of the premises it is only necessary to add that the sanitary, light and water rates in respect of the whole of the premises have at all material times been paid by the respondent without any contribution from either of the other occupants.

At the trial there was acute controversy as to the extent of the respondent's tenancy and as to this the Magistrate had to consider three different versions.

The appellant's version was "I only sub-let 3 rooms on the top floor front portion — unfurnished. Nothing was said of the ground-floor which was furnished by me". She went on to say that in fact the respondent made use of the ground-floor in the way that has been described. Her evidence was silent as to the terms on which she permitted this use although it is perhaps significant that in the letter giving the respondent notice to terminate his sub-tenancy written by her present lawyer it is stated that "she has, as a matter of grace, allowed you in the past to share with her the use of the living quarters downstairs."

Khor Ah Gim said that it was she who had negotiated the terms of the sub-tenancy and her version was: "the terms were for 3 rooms upstairs and for joint use of everything downstairs."

The respondent's version was that he became the sub-tenant of the whole house, but that "as a temporary measure" he had allowed the appellant and Khor Ah Gim to reside on the premises.

There was thus a question of fact to be decided by the Magistrate and, although he has to some extent confused the matter by deciding a number of questions to which it was not necessary that he should apply his mind, it is quite clear that in the event he accepted the defendant's version. What he says in his judgment is this :—

> "I am of the opinion that defendant has been and is in full control of the premises ever since his occupation of it and I believe that he has allowed the plaintiff and plaintiff's witness . . . . . to live there as an act of grace."

That is a finding of fact with which I can see no ground for interfering. There is evidence to support it and there is nothing inherently improbable about it, particularly when it is remembered that the respondent paid the whole of the rates, that until the parties fell into dispute the rent receipts were made out for "house rent", and that the amount of the rent when viewed from the standpoint of 1942 was substantial.

For the appellant it was argued both in the Magistrate's Court and before me what was let to the respondent at the material date (which was the date of commencement of the proceedings) was three upstairs rooms together with the use jointly with the appellant (and possibly Khor Ah Gim) of the downstairs portion of the premises. On this it was argued on the strength of the English case of *Neale v. Del Soto*[1] that the premises held by the respondent were not premises or part of premises let 'separately' and so were not premises falling within the protection of the Control of Rent Ordinance.

With regard to the case of *Neale v. Del Soto*[1] there would appear to be a certain amount of lack of coincidence of judicial opinion in this country. In the Singapore case of *Ng Kim Beng v. Tay Siong Chuan*[2], Gordon-Smith, J., decided that the principle laid down in that case as applied in it and in subsequent English cases should be applied to the interpretation of the Singapore Control of Rent Ordinance. In the local case of *Leong Hoi Kow v. Yap Wee Chong*[3], Pretheroe, J., while not in terms dissenting from the opinion of Gordon-Smith, J., would seem to have thought that by reason of difference between conditions in Malaya and conditions in England the principle in question could only apply to the interpretation of the local Control of Rent Ordinance, if it applied at all, with considerably diminished force.

I do not think that either of these decisions is binding on me. The first case is a Singapore one and the observations of Pretheroe, J., in the second case were *obiter* and not necessary for the disposal of the matter before him which indeed was disposed of on entirely different grounds.

With the greatest possible respect I do not think that any principle which may have been laid down in *Neale v. Del Soto*[1] is of any very great assistance in the interpretation of the local Control of Rent Ordinance. The English Rent Restriction Acts only apply to any "house or a part of a house let as a separate dwelling" (such are the words of the statute, not of the Court) and all that was decided in *Neale v. Del Soto*[1] was that where what was let to a tenant was the exclusive use of two rooms in a large house together with the use jointly with the landlord of the kitchen and other domestic offices such a letting was not a letting of the two rooms as a separate dwelling. In other words, the case did not decide that premises not let as a separate dwelling were outside the scope of the Rent Restriction Acts, for that is provided by the statutes themselves, but only decided that certain premises comprised in a particular contract of letting did not constitute a "separate dwelling" for the purposes of the Acts. To my mind this amounts to no more than saying that the proposition that the attributes of "sharing" and "separate letting" are mutually exclusive only operates to remove premises from the scope of the Acts where the part of the premises shared would otherwise be within their scope, that is where the part shared is itself part of a dwelling.

But all this has little relevance to our local Ordinance. Subject to certain exceptions which do not affect the argument in any way, that Ordinance applies not only to dwelling houses but to numerous other specified classes of premises always provided they are "let or sub-let separately". The enumeration of these classes of premises is so exhaustive as apparently to include (subject to the specified exceptions) any building or part of a building in which people live or work or are employed and so in practice the only test to be employed in deciding whether premises come within the scope of the Ordinance is whether or not they are "Let or sub-let separately". If they are let separately the tenancy is protected, if they are not let separately the tenancy is not protected. The nature of the premises is completely irrelevant.

Applying that test in the present case the Magistrate's finding of fact, with which I have already declined to interfere, leads unavoidably to the conclusion that the premises let to the respondent were let separately for what the Magistrate found was that what was let to the respondent was the whole shophouse and that it was only as a matter of grace that the appellant and Khor Ah Gim were allowed to remain in occupation of any part of it. That being so it follows that what was let to him was premises within the meaning of the Ordinance, that his tenancy was

protected by the Ordinance and that, except for arrears of rent, ejectment proceedings could not be brought against him without the permission of the Rent Assessment Board. As has been said there is no question of the rent being in arrear at any material time, and the permission of the Board was not obtained.

The appeal, therefore, must fail and is dismissed with taxed costs to the respondent.

Appeal dismissed.

TOH WHYE TECK v. THE HAPPY WORLD LTD.

[A. C. J. (Whitton, J.) May 18, 1953]

[Singapore — District Court Appeal No. 28 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(j) — Onus of proof as to payment of Municipal services — Evidence Ordinance (Chapter 13) ss. 104 and 107.

In this case the District Judge found in favour of the respondent for recovery of possession under section 14 (1)(j). On appeal, it is agreed, that the issue was "on whom does the burden lie to show what sums came within the section and what payments are saved by this provision relating to Municipal services."

Held: (1) it is sufficient for the respondent to establish prima facie that the rent received by the tenant exceeded in the aggregate 75% of the rent paid to himself; (2) since the respondent has established a prima facie case the rent paid to the tenant falls within the section, the burden shifts on to the appellant to show that he is covered by the provisions regarding payment of Municipal services; (3) to hold otherwise would be an unreasonable burden on the landlord.

[Editorial Note:— Section 14(1)(j) of the Control of Rent Ordinance, 1947, has been repealed and re-enacted as section 15(1)(g) of the Control of Rent Ordinance, 1953.]

DISTRICT COURT APPEAL.

Lee Kuan Yew for the appellant.

Chong Thutt Pitt for the respondent.

Whitton, J., delivering oral judgment said: — In this case the District Judge found in favour of the plaintiff-respondent on the ground that he has brought himself within the provisions of section 14(1)(j) of the Control of Rent Ordinance, 1947. This section is one of the provisions which constitute exceptions to the general restriction on right to possession of premises coming within the scope of this Ordinance. In effect section 14(1)(j) states that where a landlord has let the premises to a tenant and the tenant has sub-let the premises or part thereof and in respect of such subletting receives rents (excluding any Municipal services paid by the tenant) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant, an order may be made for the recovery of the premises. Now this case, it is agreed, depends upon the issue raised by the question of the payment of Municipal services paid by the tenant. In calculating the rents received from sub-tenants in relation to those he pays to the landlord, the tenant is entitled to exclude any Municipal services paid for by himself. The question then arises on whom does the burden lie to show what sums would come within the section; and what payments are served by this provision relating to Municipal services. Mr. Lee Kuan Yew has argued with great ability that some evidence at least should have been produced by the plaintiff as to the payments made for Municipal services. If that evidence was forthcoming he would concede that the burden is then shifted to the defence. This argument is not to be dismissed lightly, but on reflection I consider it is sufficient for the plaintiff, if, as in this case, he establishes *prima facie* that the rents received by the tenant exceeded in the aggregate 75% of the rent paid to himself.

I would express the view that it is not only a question of section 107 of the Evidence Ordinance which has application here, but I think section 104 also has application. It reads, "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

To sum up my conclusions, it seems to me that the landlord fulfils his responsibility if he shows *prima facie* that the rent paid to the tenant falls within the section. If he does that, then I think the burden shifts to the defendant to show that he is covered by the provision regarding payment for Municipal services. To hold otherwise, it seems to me, would be an unreasonable burden on the landlord, quite apart from the provisions of the Evidence Ordinance on the matter.

The appeal is dismissed with costs.

Appeal dismissed.

P. V. P. L. MEENATCHI (w) v. LALL SINGH & ORS.

[O. C. J. (Whitton, J.) May 22, 1953]

[Singapore — Suit No. 300 of 1952]

Hindu Law — "Karta" or the Managing member of the Hindu Joint Family — Whether a woman can be a "Karta" — Hindu Code, s. 131 — Co-parcenary.

This was a Summons in Chamber to amend the Writ of Summons so that the plaintiff may sue in the capacity of "Karta". The matter was adjourned into Open Court for hearing.